IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Second Appeal No.271 of 1990

1. Mahamuni Tipanna Hosmani
2. Sou.Gunavanti Mahamuni Hosmani ..Appellants

V/s

1. Ashok Jangappa Hosmani
2. Hanmantu Jangappa Hosmani .. Respondents

Mr.Shantaram R. Dheple holding for Mr.R.V.More for the Appellants

Mr.A.M.Kulkarni holding for Mr.A.A.Kulkarni for Respondent nos. 1 and 2

CORAM:S.R.SATHE,J.

DATED:28th July 2004

ORAL JUDGMENT :-

1. Being aggrieved by the judgment and order passed by the Court of Additional District Judge,

Solapur in Civil Appeal No.262 of 1988, whereby the appeal filed by the plaintiff was allowed and defendant was directed to hand over possession of the suit property, the original defendant has preferred this appeal.

2. Brief facts giving rise to this Second Appeal are as under :-

. The suit property is situated in the slum area declared under Section 4 of Maharashtra Slum Areas (Improvement,Clearance and Redevelopment) Act, 1971 (hereinafter referred to as Slum Area Act).After the area was declared as a slum, census was taken and at that time plaintiff no.2 and members of his family were shown as the persons actually in possession of the suit property. The defendant nos.1 and 2 were residing in front of the suit property. It is plaintiff's case that taking advantage of the fact that he was out of town, defendant nos 1 and 2 forcibly entered in the suit property. He therefore, filed suit for possession i.e. regular Civil Suit No.599 of 1980.

3. The defendants appeared and contended that the suit property was not owned and possessed by the plaintiff but on the contrary have been given to them and their possession is legal. Hence they prayed for dismissal of the suit. After considering the evidence adduced by both the parties, the learned trial Court came to the conclusion that the plaintiff is not entitled to recover possession of the suit property naturally he dismissed the suit.

4. Being aggrieved by the same the defendants preferred Civil Appeal No.262 of 1988 In the appeal the defendants contended that provisions of Section 22 of Slum Area Act were applicable to the suit property and as the suit was filed without prior written permission of the authority, the suit was not maintainable. The learned Appellate Court however rejected the said contention and also observed that decree passed by the trial Court, dismissing the suit and refusing to hand over possession to the plaintiff was not legal and correct. He therefore allowed

the appeal and directed the defendant to hand over the possession of the suit property.

5. Being aggrieved, the defendants filed this Second Appeal.

6. In this Second Appeal before me, the only point that has been argued by the learned Advocate for the defendant Appellant that provisions of section 22 of Slum Area Act are applicable and as a result of the same the suit is not maintainable. It would be worthwhile to see what Section 22 says. It runs as follows:-

> 22. (1) Notwithstanding anything contained in any other law for the time being in force, no person shall except with the previous permission in writing of the Competent authority, -
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> a) institute, after commencement of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 any suit or proceeding for obtaining any

decree or order for the eviction of an occupier from any building or land in a slum area or for recovery of any arrears of rent or compensation from any such occupier,or for both; or

b) when any decree or order is obtained in any suit or proceeding instituted before such commencement for the eviction of an occupier from any building or land in such area or for recovery of any arrears of rent or compensation from such occupier, or for both execute such decree; or

c) apply to any Judge or the Registrar of the Small Cause Court under Chapter VIII of the Presidency Small Cause Courts Act, 1882, in its application to the State of Maharashtra,or to any Court or Small Causes under Chapter IV A of the Provincial Small Cause Courts Act, 1887, in its application to the State of Maharashtra, for a distress warrant for

arrears of rent against any occupier of a house or premises in a slum area". In order to substantiate his proposition, the learned Advocate for the defendant also placed reliance on a case, Taj Mohamed Yakub V/s Abdul Gani Bhikan reported in 1991 Mh.L.J.263 wherein the Division Bench of this Hon’ble Court has held that a trespasser is included in the definition of "Occupier" and decree for possession cannot be executed without previous permission of Competent Authority.

8. The learned Advocate for the Respondent canvassed before me that above mentioned ruling is not applicable to the facts of the present case. He submitted that in the instant case the plaintiff was not the "owner" of the suit property. The allegation was that defendant trespassed the suit land when it was occupied by the plaintiff, who is admittedly not the owner of the property. Having regard to this factual position, I think that it is absolutely necessary

to find out whether the defendant can be said to be occupier. For this purpose one has to see the definition of occupier as given in Section 2(e) of the Slum Area Act, it runs as follows :-

> 2(e) "occupier" includes -
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> i) any person who for the time being is paying or is liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which such rent is paid or is payable;
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> ii) an owner in occupation of, or otherwise using, his land or building;
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> iii) a rent free tenant of any land or building;
>
> iv) a license in occupation of any land or building; and
>
> v) any person who is liable to pay to the owner damages for the use and occupation

of any land or building;

It would also be relevant to note the definition of "owner" given in the said Act, it runs as follows :-

> 2f) "owner", when used within reference to any building or land,means the person who receives or is entitled to receive or is entitled to receive the rent of the building or land, if the building or land were let, and includes -
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> i) an agent or trustee who receives such rent on account of the owner;
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> ii) an agent or trustee who receives the rent of, or is entrusted with, or concerned for, any building or land devoted to religious or charitable purpose;
>
> iii) a receiver, sequestrates or manager appointed by a court of competent

jurisdiction to have the charge of or to exercise the rights of owner of the said building or land; and

iv) a mortgagee in possession

(but does not include, a slumlord)

9. Having regard to the above mentioned two definitions let us see whether the plaintiff and defendant in the instant case can be called as owner and occupier respectively. So far as the plaintiff is concerned, he is not original owner of the suit property. He has in fact taken the property on rent as a tenant so he cannot be termed as a "owner" as contemplated under Slum Area Act. Similarly, so far as the defendants are concerned, they do not fall in any of the clauses nos i) to v) of the definition of occupier.

10. It is true that the plaintiffs have alleged that defendants have made encroachment and they are trespassers. If we see the facts of the

above cited ruling we find that in that case the plaintiff was admittedly an owner of the open plot and Respondent had made encroachment on the same so it was in fact a case where the stranger had made an encroachment on the land or property owned by the plaintiff. However, in the instant case the defendant has made an encroachment on the property which was admittedly let out to the plaintiffs. Considering this position, it has to be held that above cited ratio is not applicable to the facts of the present case. So I have no hesitation to hold that in the instant case the provisions of Section 22 of Slum Area Act are not at all applicable. The Appellate Court has rightly considered this aspect and held that provisions of Slum Area Act are not applicable in the instant case and correctly passed the decree for possession. There is nothing on record to show that the order passed by the lower Appellate court was illegal or perverse.

11. In this view of the matter there is no substance in this Second appeal. The appeal is dismissed with no order as to costs.

(S.R.SATHE, J.)